

House File 2637 - Introduced

HOUSE FILE _____
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 94)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to communications made in professional confidence
2 concerning health care and health care records and providing
3 for fees.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 6586HV 82
6 rh/rj/5

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1 1 Section 1. Section 622.10, subsection 3, paragraphs a, d,
1 2 and e, Code Supplement 2007, are amended to read as follows:
1 3 a. In a civil action in which the condition of the
1 4 plaintiff in whose favor the prohibition is made is an element
1 5 or factor of the claim or defense of the adverse party or of
1 6 any party claiming through or under the adverse party, the
1 7 adverse party shall make a written request for records
1 8 relating to the condition alleged upon the plaintiff's ~~counsel~~
1 9 attorney for a legally sufficient patient's waiver under
1 10 federal and state law. Upon receipt of a written request, the
1 11 plaintiff shall execute ~~the a legally sufficient patient's~~
1 12 waiver and release it to the adverse party making the request
1 13 within sixty days of receipt of the written request. The
1 14 patient's waiver may require a physician or surgeon, physician
1 15 assistant, advanced registered nurse practitioner, or mental
1 16 health professional to do all of the following:
1 17 (1) Provide a complete copy of the patient's records
1 18 including, but not limited to, any reports or diagnostic
1 19 imaging relating to the condition alleged.
1 20 (2) Consult with the attorney for the adverse party prior
1 21 to providing testimony regarding the plaintiff's medical
1 22 history and the condition alleged and opinions regarding
1 23 health etiology and prognosis for the condition alleged
1 24 subject to the limitations in ~~paragraph paragraphs "c" and~~
1 25 "e".
1 26 d. Any physician or surgeon, physician assistant, advanced
1 27 registered nurse practitioner, or mental health professional
1 28 who provides records or consults with the ~~counsel attorney~~
1 29 ~~the adverse~~ any party shall be entitled to charge a reasonable
1 30 fee for production of the records, diagnostic imaging, and
1 31 consultation. Any party seeking consultation shall be
1 32 responsible for payment of all charges. ~~The fee fees for~~
1 33 ~~copies of any records shall be based upon actual cost of~~
1 34 ~~production be as specified in subsection 4A.~~
1 35 e. Defendant's counsel shall provide a written notice to
2 1 plaintiff's ~~counsel attorney~~ in a manner consistent with the
2 2 Iowa rules of civil procedure providing for notice of
2 3 deposition at least ten days prior to any meeting with
2 4 plaintiff's physician or surgeon, physician assistant,
2 5 advanced registered nurse practitioner, or mental health
2 6 professional. Plaintiff's ~~counsel attorney~~ has the right to
2 7 be present at all such meetings, or participate in telephonic
2 8 communication with the physician or surgeon, physician
2 9 assistant, advanced registered nurse practitioner, or mental
2 10 health professional and ~~counsel attorney~~ for the defendant.
2 11 Prior to scheduling any meeting or engaging in any
2 12 communication with the physician or surgeon, physician
2 13 assistant, advanced registered nurse practitioner, or mental
2 14 health professional, attorney for the defendant shall confer
2 15 with plaintiff's attorney to determine a mutually convenient
2 16 date and time for such meeting or telephonic communication.
2 17 Plaintiff's ~~counsel attorney~~ may seek a protective order

2 18 structuring all communication by making application to the
2 19 court at any time.

2 20 Sec. 2. Section 622.10, subsection 4, Code Supplement
2 21 2007, is amended to read as follows:

2 22 4. If an adverse party desires the oral deposition, either
2 23 discovery or evidentiary, of a physician or surgeon, physician
2 24 assistant, advanced registered nurse practitioner, or mental
2 25 health professional to which the prohibition would otherwise
2 26 apply or the stenographer or confidential clerk of a physician
2 27 or surgeon, physician assistant, advanced registered nurse
2 28 practitioner, or mental health professional or desires to call
2 29 a physician or surgeon, physician assistant, advanced
2 30 registered nurse practitioner, or mental health professional
2 31 to which the prohibition would otherwise apply or the
2 32 stenographer or confidential clerk of a physician or surgeon,
2 33 physician assistant, advanced registered nurse practitioner,
2 34 or mental health professional as a witness at the trial of the
2 35 action, the adverse party shall file an application with the
3 1 court for permission to do so. The court upon hearing, which
3 2 shall not be ex parte, shall grant permission unless the court
3 3 finds that the evidence sought does not relate to the
3 4 condition alleged ~~and~~. At the request of any party or at the
3 5 request of the deponent, the court shall fix a reasonable fee
3 6 to be paid to ~~the~~ a physician or surgeon, physician assistant,
3 7 advanced registered nurse practitioner, or mental health
3 8 professional by the party taking the deposition or calling the
3 9 witness.

3 10 Sec. 3. Section 622.10, Code Supplement 2007, is amended
3 11 by adding the following new subsection:

3 12 NEW SUBSECTION. 4A. The fee charged for the cost of
3 13 producing the requested records or images shall be based upon
3 14 the actual cost of production. If the written request and
3 15 accompanying patient's waiver, if required, authorizes the
3 16 release of all of the patient's records for the requested time
3 17 period, including records relating to the patient's mental
3 18 health, substance abuse, and acquired immune deficiency
3 19 syndrome-related conditions, the amount charged shall not
3 20 exceed the rates established by the workers' compensation
3 21 commissioner for copies of records in workers' compensation
3 22 cases. If requested, the provider shall include an affidavit
3 23 certifying that the records or images produced are true and
3 24 accurate copies of the originals for an additional fee not to
3 25 exceed ten dollars.

3 26 EXPLANATION

3 27 This bill relates to communications made in professional
3 28 confidence concerning health care and health care records and
3 29 provides for fees.

3 30 The bill provides that in a civil action in which the
3 31 health condition of a plaintiff is an element or factor of the
3 32 claim or defense, defendant's attorney and plaintiff's
3 33 attorney shall determine a mutually convenient date and time
3 34 for any meeting or telephonic communication with the physician
3 35 or surgeon, physician assistant, advanced registered nurse
4 1 practitioner, or mental health professional.

4 2 In addition, the bill provides that if an adverse party
4 3 desires the oral deposition, either discovery or evidentiary,
4 4 of a physician or surgeon, physician assistant, advanced
4 5 registered nurse practitioner, or mental health professional,
4 6 or the stenographer or confidential clerk of a physician or
4 7 surgeon, physician assistant, advanced registered nurse
4 8 practitioner, or mental health professional or desires to call
4 9 a physician or surgeon, physician assistant, advanced
4 10 registered nurse practitioner, or mental health professional,
4 11 or the stenographer or confidential clerk of a physician or
4 12 surgeon, physician assistant, advanced registered nurse
4 13 practitioner, or mental health professional as a witness at
4 14 the trial of the civil action, upon request of either party or
4 15 the person being deposed, the court shall fix a reasonable fee
4 16 to be paid to a physician or surgeon, physician assistant,
4 17 advanced registered nurse practitioner, or mental health
4 18 professional by the party taking the deposition or calling the
4 19 witness.

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4 21 producing the requested records or images shall be based upon
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4 33 additional fee not to exceed \$10.
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